

**AGREEMENT FOR JOINT SEWAGE DISPOSAL**

This Agreement for Joint Sewage Disposal (hereinafter the "Agreement") is entered into effective as of April 2, 2007 between the State of California, California Department of Corrections (hereinafter the "Department") and the City of Folsom, a Municipal Corporation (hereinafter the "City") for the transportation of sanitary sewage discharged from California State Prison, Folsom (hereinafter "Folsom Prison") through the City's system of trunk sewers and for the associated maintenance and capital improvement costs.

**RECITALS**

A. WHEREAS, on or about May 16, 1973, the City and the Department entered into a written agreement pursuant to which the City agreed to permit the Department to transport sanitary sewage discharged from Folsom Prison through the City's system of trunk sewers, ultimately to the facilities of the Sacramento Regional County Sanitation District, formerly the Northeast Sacramento County Sanitation District (hereinafter the "1973 Agreement"); and

B. WHEREAS, pursuant to the 1973 Agreement, the Department has had a 20-inch interceptor line running from its property at Folsom Prison for the sole and exclusive use of the Department and connecting into a 27-inch main trunk sewer line within the City's property for the joint use of the Department and the City; and

C. WHEREAS, the 1973 Agreement contained various provisions for capital improvements, the sharing of capital costs, the sharing of treatment costs, and the sharing of maintenance and operating costs, including, without limitation, provisions that all costs associated with the 20-inch interceptor line would be paid exclusively by the Department, and the costs associated with the joint use facilities would be paid jointly by the Department and the City; and

D. WHEREAS, over time, certain changes and upgrades have been made to the joint use facilities; and

E. WHEREAS, certain disputes arose between the City and the Department regarding the allocation and sharing of costs under the 1973 Agreement, primarily associated with the maintenance and operation of the joint use facilities; and

F. WHEREAS, it will be of mutual benefit to both the Department and the City to resolve their disputes regarding the allocation and sharing of costs associated with the joint use facilities and to enter into a new agreement for joint sewage disposal;

NOW THEREFORE, the City and the Department agree as follows:

## AGREEMENT

In consideration of the mutual covenants and promises set forth below, and for good and fair consideration, the parties agree and stipulate as follows:

1. The Recitals stated above are contractual in nature and hereby incorporated.

2. The 1973 Agreement is hereby amended and superseded in full by this Agreement and, upon execution of this Agreement, shall have no further force or effect.

3. The "Joint Use Facilities" are hereby defined to refer exclusively to the 27-inch main trunk sewer line with the City's property, and any upgrades or additions thereto mutually agreed upon by the City and the Department.

4. Sewage Transport and Capacity.

a. The City shall continue to permit the Department to transport sanitary sewage discharged from Folsom Prison and new Folsom Prison (collectively referred to as the "Prison"), through the City's system of trunk sewers, ultimately to the facilities of the Sacramento Regional County Sanitation District (the "District") for a continual period equal to the rights of the City to dispose of its sewage in the facilities of the District on the terms and conditions set forth herein.

b. The City shall accept, transport and dispose of all sanitary sewage emanating from the Folsom Prison and New Folsom Prison through the City's sewage system at an average daily rate of 1.15 million gallons, with a maximum daily flow rate not to exceed 2.50 million gallons, and shall ensure the disposal of said sewage into the District's conveyance facilities.

c. The Department's sewage flow shall be calculated by measurement of flow at the 20-inch interceptor.

5. Treatment Costs.

To the extent that the District levies charges against the City for the treatment of the Department's sewage transported through the City's system of trunk sewers, the Department shall reimburse the City for the portion of the charge allocable to the Department computed based on the Department's monthly metered flow if the District's levy is based on flow or, if not based on flow, based on whatever assessment the District levies against the City applicable to the Department.

6. Maintenance and Operation Charges.

a. 20-inch Interceptor.

i. All costs for maintenance and operation of the 20-inch interceptor shall be borne exclusively by the Department. Any such costs incurred by the City shall be reimbursed by the Department to the City.

ii. The following maintenance and operation activities for the 20-inch interceptor shall be performed by the City on an annual basis and reimbursed by the Department to the City as set forth herein: physical inspection, hydraulic cleaning and meter maintenance.

iii. The following maintenance and operation activities for the 20-inch interceptor line shall be performed by the City on a five-year basis and reimbursed by the Department to the City as set forth herein: televise, bucket clean and meter replacement.

iv. The Department shall cooperate with the City's annual and five-year maintenance and operation activities on the 20-inch interceptor by providing access, upon reasonable notice, for the City to the Department's property at the Prison.

v. All maintenance and operation activities for the 20-inch interceptor not identified under paragraphs 6(a)(ii)-(iii) shall be performed by the Department at its sole cost, except that, the Department may request the City to perform said additional maintenance and operation activities and thereafter reimburse the City for the associated costs.

b. Joint Use Facilities.

i. The Joint Use Facilities shall be maintained and operated by the City. All costs associated with the maintenance and operation of the Joint Use Facilities shall be shared jointly by the City and the Department computed based on percentage of flow as follows:

Metered Monthly Flow of the Prison \_\_\_\_\_ x Monthly M&O Expense  
Metered Monthly Flow of the Prison and City

ii. The following maintenance and operation activities for the Joint Use Facilities shall be performed by the City on an annual basis, and the associated costs incurred by the City shall be reimbursed by the Department to the City as set forth herein: physical inspection, hydraulic cleaning and traffic control.

iii. The following maintenance and operation activities for the Joint Use Facilities shall be performed by the City on a five-year basis, and the

associated costs incurred by the City shall be reimbursed by the Department to the City as set forth herein: televise, bucket clean and meter replacement.

c. Administration and Overhead.

i. Effective July 1, 2005, the Department shall pay a monthly fee to the City in the amount of \$2000 per month for the City's administrative costs associated with the City's compliance with its NPDES permit. This monthly fee shall be increased annually by three percent (3%), effective July 1 of each year.

ii. The Department shall reimburse the City in the amount of twenty-five percent (25%) of the City's overhead associated with the City's maintenance and operation activities as the Department's proportionate share of said overhead. The City shall have the right to request an increase in this percentage of its overhead on no less than a five-year basis. In the event the City requests such an increase in the percentage of its overhead, the City shall propose such increase to the Department. The Department shall respond to the City's request within thirty (30) days of receipt of the same. If the Department fails to respond to the City's request within thirty (30) days, the City's request shall be deemed granted, and the City will be entitled to thereafter invoice and receive payment from the Department for the increase percentage of its overhead. In the event the Department denies the City's request to increase the percentage of overhead, the City may submit the issue for resolution to a neutral person in accordance with the provisions of Paragraph 12(a) below.

d. Invoicing and Payment.

i. The City shall send monthly invoices to the Department representing the allocated monthly amount for the maintenance and operation, administrative and overhead costs incurred by the City. The Department shall pay the City's invoices within forty-five (45) days of receipt. Invoices that are not timely paid shall bear interest at the rate of 10 percent (10%) per annum.

ii. On an annual basis, commencing July 1, 2007, the City shall provide a reconciliation (the "Annual Reconciliation") to the Department of the actual maintenance and operation, administrative and overhead costs incurred by the City and for which the Department is obligated to reimburse the City under this Agreement. The City's Annual Reconciliation will identify whether any under or overpayments have been made. Any adjustment for either an underpayment or an overpayment will be reflected on the City's next monthly invoice to the Department. In the event of any dispute between the City and the Department regarding the Annual Reconciliation, the parties agree to submit said dispute to a neutral person for resolution in accordance with the provisions of Paragraph 12(a) below.

iii. The City shall keep accurate records of all maintenance and operation expenses it has incurred. Said records shall be made available for inspection by the Department upon reasonable notice.

7. Capital Improvements.

a. The City and the Department shall cooperate mutually with each other in identifying and constructing any capital improvement projects. In the event that either party identifies the need for a capital improvement or expenditure, that party shall promptly give notice to the other. The parties thereafter shall cooperate mutually in determining how the capital improvement shall be made, including, without limitation, determining the scope of work, obtaining any necessary design work, preparing any necessary construction documents, securing bids and/or arranging for the City's or the Department's own forces to do the work.

b. All costs for capital improvements on the 20-inch interceptor shall be borne exclusively by the Department. Any such costs incurred by the City shall be reimbursed by the Department to the City.

c. All costs for capital improvements on the Joint Use Facilities shall be shared jointly by the City and the Department computed based on percentage of flow as follows:

$$\frac{\text{Metered Monthly Flow of the Prison}}{\text{Metered Monthly Flow of the Prison and City}} \times \text{Capital Improvement Expense}$$

d. Unless otherwise agreed to in writing by the parties, all capital improvement expenditures allocable to the Department shall, at the City's discretion, either be included in the monthly invoices to the Department or be separately invoiced.

e. Each party hereto agrees to cooperate with the other in applications for grants, loans or funds from any sources, public or private, to provide for capital improvements under this Agreement. The allocation between the parties of any funds so acquired, including but limited to the payment therewith of any monetary obligation imposed by this Agreement, shall be based, as nearly as may be reasonable and practicable on the legislative, donative or lender's intent in making available or providing the grant, loan or fund and on the intent of the parties hereto.

f. In the event of any dispute between the City and the Department regarding a capital improvement, including, without limitation, related to the need for the capital improvement, the type of improvement, and/or the costs for the improvement, the parties agree to submit said dispute to a neutral person for resolution in accordance with the provisions of Paragraph 12(a) below.

8. Sanitary Sewer Overflows; Damage to Sewer Lines.

a. In the event of a Sanitary Sewer Overflow (“SOS”) on the Department’s property at the Prison, the Department, at its sole cost, shall immediately respond to and correct the SOS, as well as the cause thereof. In the event the Department fails to immediately respond to and correct the SOS, as well as the cause thereof, the City shall have the right, at the Department’s sole cost, to respond to and correct the SOS, as well as the cause thereof. In the event of an SOS associated with the 20-inch interceptor line that occurs off the Department’s property at the Prison, the City shall, upon receipt of notice of the same, provide immediate notice to the Department and shall, at the Department’s sole cost, immediately respond to and correct the SOS, as well as the cause thereof. All costs incurred by the City in responding to a SOS on the 20-inch line shall be included in the next monthly invoice to the Department or within 30 days.

b. The City and the Department shall cooperate mutually with each other in responding to any SOS. Additionally, the City and the Department each shall immediately notify the other in the event either discovers any condition that poses a reasonable threat of an SOS.

c. In the event of any damage to the 20-inch interceptor on the Department’s property at the Prison, whether or not associated with an SOS, the Department, at its sole cost, shall immediately respond to and correct the damage. In the event the Department fails to immediately respond to and correct the damage, the City shall have the right, at the Department’s sole cost, to respond to and correct the damage.

d. In the event of any damage to the 20-inch interceptor line that occurs off the Department’s property at the Prison, the City shall, upon receipt of notice of the same, provide immediate notice to the Department and shall, at the Department’s sole cost, immediately respond to and correct the damage. All costs incurred by the City in responding to damage to the 20-inch line shall be included in the next monthly invoice to the Department or within 30 days.

e. In the event of any damage to the Joint Use Facilities, the City shall, upon receipt of notice of the same, provide notice to the Department and shall respond to and correct the damages. All costs associated with repairs to the Joint Use shall be shared jointly by the City and the Department computed based on percentage of flow as follows:

$$\frac{\text{Metered Monthly Flow of the Prison}}{\text{Metered Monthly Flow of the Prison and City}} \times \text{Repair Cost}$$

f. The City and the Department shall cooperate mutually with each other in responding to damage to either the 20-inch interceptor or the Joint Use Facilities. Additionally, the City and the Department each shall immediately notify the other in the event either discovers any condition that poses a reasonable threat of damage to the 20-inch interceptor or the Joint Use Facilities.

9. Indemnification.

a. To the extent caused in whole or in part by the Department, its officers, directors, agents, contractors, employees, servants, or licensees, the Department shall defend, indemnify, and hold harmless the City and the City's agents, officials, employees and representatives from any and all claims, actions, damages, liabilities, expenses, disciplinary proceedings, administrative proceedings or any other investigation, proceeding, action or penalty of any kind, including, without limitation, related to the any SOS, City's NPDES permit, or in connection with loss of life, personal injury or property damages. If any action or proceeding is brought against City, its officials, employees, or agents by reason of any such claim, the Department, upon notice from the City, will defend the claim at the Department's expense.

b. To the extent caused in whole or in part by the City, its agents, officials, employees, representatives, contractors or licensees, the City shall defend, indemnify, and hold harmless the Department and the Department's officers, directors, agents or employees from any and all claims, actions, damages, liabilities, expenses, disciplinary proceedings, administrative proceedings or any other investigation, proceeding, action or penalty of any kind, including, without limitation, related to the any SOS, City's NPDES permit, or in connection with loss of life, personal injury or property damages. If any action or proceeding is brought against the Department, its officers, directors, agents or employees by reason of any such claim, the City, upon notice from the Department, will defend the claim at the City's expense.

10. Controls and Rights as to Use.

In addition to the other terms and conditions set forth in this Agreement, the Department's rights of use, as provided hereunder, shall be subject to the following regulations and controls:

a. The City shall have the right to inspect and inquire into the manner in which the Department is maintaining and operating the Department's sanitary sewer system on the Department's controlled property to the end that said system shall be maintained, repaired and operated in good working order.

b. Either party may examine the books, records, accounts and accounting records of the other relative to the operation and maintenance of the other party's sewage system. Each party shall, within a reasonable time after a request by the other for such an examination and at reasonable hours, make all such records available for inspection to the other party.

c. The Department shall not permit waters emanating or flowing from leaders, roofs, surface drains, storm drains or surface waters and storm waters to be introduced into the City's sanitary sewer system.

11. General.

a. The City and its agents, officers, officials, and employees in the City's performance of this Agreement shall act in an independent capacity and not as officers, agents or employees of the Department.

b. The Department and its agents, officers, officials and employees in the Department's performance of this Agreement shall act in an independent capacity and not as officers, agents or employees of the City.

c. The Department shall not be liable for compensation to any agent, officer or employee of City for injury or sickness arising out of his or her employment under this Agreement.

d. The City shall not be liable for compensation to any agent, officer or employee of the Department for injury or sickness arising out of his or her employment under this Agreement.

e. Except as expressly provided herein, nothing contained in this Agreement shall be deemed to give the Department or the City any property rights, title or interest in or to the other party's sanitary sewer system, works, facilities, trunk sewer line and effluent, or any party thereof.

f. No waiver by either party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

g. Each party agrees to execute any and all documents and instruments necessary to effect the provisions of this Agreement.

12. Breach and Dispute Resolution.

a. In the event of any dispute regarding (i) a request by the City to increase the percentage of its overhead costs to be reimbursed by the Department, (ii) the City's Annual Reconciliation, or (iii) related to the capital improvement projects under Paragraph 7(f) of this Agreement, the parties agree to submit the dispute to a neutral third person, jointly retained, for resolution. The neutral person shall be retained within fifteen (15) days of when the dispute arises; the matter shall be submitted for decision to said neutral person within thirty (30) days after he or she is retained; the neutral person shall render his or her decision within thirty (30) days of when the matter is submitted; and the neutral person's decision shall be final and binding upon the parties.

b. All other disputes shall be resolved first by submitting the dispute to mediation. In the event that the dispute remains unresolved after mediation, either party may bring suit in the Sacramento County Superior Court, or any other court having



jurisdiction. In the event any litigation is brought to enforce any provision of this agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, litigation expenses and costs.

13. Notices.

All notices under this Agreement shall be given as follows:

To the City:

Director of Utilities  
50 Natoma Street  
Folsom, CA 95630

To the Department:

Correctional Plant Manager  
Folsom State Prison  
Represa, California

14. Entire Agreement.

This Agreement for Joint Sewage Disposal contains the entire agreement between the parties and the terms of this Agreement are contractual and not mere recitals. This Agreement may not be changed, modified, altered, interlineated, or supplemented, nor may any covenant, representation, warranty or other provision be waived, except by agreement in writing signed by the party against whom enforcement of the change, modification, alteration, interlineation, supplementation or waiver is charged.

15. Authority to Execute.

The parties have been fully advised by their counsel as to the contents of this document. Each party to this Agreement warrants that: (1) he, she or it is legally authorized and competent to execute this Agreement and, (2) he, she or it has not assigned to any other person or entity all or any part of rights hereunder, and (6) the party who executes this Agreement has actual authority to bind the party on whose behalf he, she or it signs.

16. Successors and Assigns.

This Agreement shall inure to the benefit of, and bind the successors and assigns of the parties hereto. Except in the event of a departmental or agency re-structuring, the Department shall not have the right to assign this Agreement or any of the rights and obligations hereunder without the prior written approval of the City, which approval may be withheld under the City's sole discretion.

17. Jointly Drafted.

This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed and interpreted as a whole according to its fair meaning and not strictly for or against any of the parties.

18. Invalidity of Provisions.

Should any court of competent jurisdiction find any provision of this Agreement to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall remain in full force and effect without such invalid, illegal or unenforceable provision(s) provided that the severance of such provision(s) does not result in a material failure of consideration under this Agreement to any party hereto.

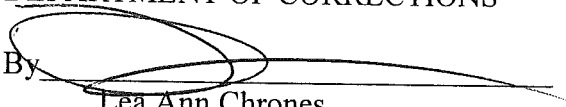
19. California Law.

Should any dispute arise hereunder, this Agreement shall be governed by and interpreted pursuant to California law.

DATED: Apr. 4, 2007

STATE OF CALIFORNIA,  
DEPARTMENT OF CORRECTIONS

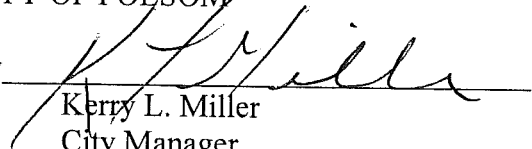
By

  
Lea Ann Chrones  
Director of Adult Institutions

DATED: 4/11, 2007

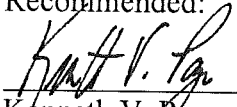
CITY OF FOLSOM

By

  
Kerry L. Miller  
City Manager

Attest: Christa Schmidt 4-11-2007  
for Christa Schmidt, Folsom City Clerk

Recommended:

 4/10/07  
Kenneth V. Payne  
Utilities Director

As to Form:

 4/10/07  
Bruce C. Cline  
City Attorney